

**J.H., Appellant**

**DEPARTMENT OF THE ARMY, CIVILIAN  
PERSONNEL ADVISORY OFFICE,  
Fort Stewart, GA, Employer**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

### Case Submitted on the Record

Before:

On July 2, 2018 appellant filed an appeal from a June 11, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1367.

On April 25, 2018 appellant, then a 39-year-old certified nursing assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained a right foot injury when “she was not able to put pressure on it and stand without being in a lot of pain” due to her performance of employment duties. She first became aware of her condition and of its relationship to her employment on May 5, 2014. On the reverse side of the form, appellant’s supervisor indicated that she was first notified of the condition on May 5, 2014.

By decision dated June 5, 2018, OWCP denied the occupational disease claim, finding that it was untimely filed. It advised appellant that the evidence submitted did not establish that she filed her April 25, 2018 claim within three years of the May 5, 2014 date of injury, or that her immediate supervisor had actual knowledge within 30 days of the date of injury.<sup>1</sup>

<sup>1</sup> OWCP noted that appellant had timely filed a claim for the May 5, 2014 injury under OWCP File No. xxxxxx395.

On June 7, 2018 appellant requested reconsideration of OWCP's decision. She reported that while she first became aware of her condition on May 5, 2014, she did not realize that it was related to factors of her federal employment until May 15, 2016.

By decision dated June 11, 2018, OWCP denied appellant's June 7, 2018 reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board finds that this case is not in posture for a decision.<sup>2</sup>

OWCP, by decision dated June 11, 2018, improperly denied appellant's request for reconsideration. The last merit decision of record was OWCP's June 5, 2018 decision. By letter dated June 7, 2018, appellant submitted a timely reconsideration request, which was within one year of the June 5, 2018 decision. OWCP should have applied the standard reserved for timely reconsideration requests as set forth in 20 C.F.R. § 10.606(b)(3). However, in its June 11, 2018 decision, OWCP reviewed the evidence submitted in support of appellant's reconsideration request under the more stringent clear evidence of error standard for untimely requests for reconsideration found in 20 C.F.R. § 10.607(a). Since it erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the clear evidence of error standard, the Board will remand the case for review of this evidence under the proper standard of review for a timely reconsideration request.<sup>3</sup>

Thus, the Board finds that the case is remanded for proper adjudication and application of the appropriate standard of review, to be followed by an appropriate decision.<sup>4</sup>

---

<sup>2</sup> See *K.K.*, Docket No. 16-1187 (issued February 7, 2017); *E.B.*, Docket No. 16-0746 (issued June 1, 2016).

<sup>3</sup> *E.S.*, Docket No. 17-0698 (issued July 14, 2017).

<sup>4</sup> *W.R.*, Docket No. 16-0098 (issued May 26, 2016).

**IT IS HEREBY ORDERED THAT** the June 11, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: July 17, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board